328, 175 S. W. 981, 986. Though sometimes public opinion will be against the accused, it seems that he is sufficiently safeguarded by his right to apply for a change of venue when a fair trial cannot be had.

CONSTITUTIONAL LAW — EVIDENCE — OBJECTION AT TRIAL TO EVIDENCE OBTAINED BY UNLAWFUL SEARCH AND SEIZURE — DELAY IN OBJECTING. — On trial under an indictment for illicit distilling, all the evidence offered by the government was the testimony of three prohibition agents who went to the defendant's residence in his absence, and seized without a warrant what they believed to be parts of a still. They destroyed all the paraphernalia before trial. The defendant made no objection to the testimony when it was given, defending on the merits. Finally, after the general charge to the jury, he requested that an acquittal be directed, on the ground that the only evidence against him was obtained by unlawful search and seizure. *Held*, that it was error to refuse the request. *Holmes* v. *United States*, 275 Fed. 49 (4th Circ.).

It is a general rule that competent evidence will be received in a criminal case without inquiring how it was procured. See *Comm.* v. *Dana*, 2 Met. (Mass.) 329, 337; *State* v. *Flynn*, 36 N. H. 64, 68. Formerly this principle was applied by the Federal courts to evidence obtained by unlawful search and seizure. *Adams* v. *New York*, 192 U. S. 585; *Youngblood* v. *United States*, 266 Fed. 795 (8th Circ.). But the rule was practically abrogated when the Supreme Court decided that an inquiry must be made when the constitutional question is raised, if it seems probable that there has been an unconstitutional seizure. *Gouled* v. *United States*, 255 U. S. 298; *Amos* v. *United States*, 255 U. S. 313. In these cases, it is to be noted, objection to the testimony was promptly made. It has been held by some courts that failure to object at the time evidence is offered, or to move promptly that it be stricken out, waives the objection. *Comm.* v. *Valsalka*, 181 Pa. St. 17, 37 Atl. 405; *State* v. *Yourex*, 30 Wash. 611, 71 Pac. 203. But other courts have been more lenient, viewing the requisite of timely objection simply as a "rule of practice." *Morton* v. *State*, 43 Tex. Cr. Rep. 533, 67 S. W. 115. See also *Reg.* v. *Gibson*, 18 Q. B. D. 537. In the principal case, in view of the attitude of the Supreme Court, the leniency extended to the defendant was not unwarrantable. No unfairness resulted to the government by eliminating the testimony at the last minute, for it had no other evidence. That the evidence in this case was testimony and not the seized property itself, does not prevent the defendant from raising the constitutional objection. See *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, 392.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — ADMINISTRATIVE DETERMINATION OF PRIVATE RIGHTS. — A Texas statute confers upon the State Board of Water Engineers the duty, among others, of investigating and determining private water rights as a step in the process of creating effective regulation and control over the taking of water from streams and other sources for irrigation purposes. (1920 TEX. REV. CIV. STAT., title 73, c. 1, arts. 5011½ f. *et seq.*) Proceedings before the board may be instituted by an individual claimant or "in case suit is started in any court for the determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the [board] for determination, as in this Act provided." Once set in motion, the board is required to ascertain all rights in the particular source to which its attention has been directed and, thereafter, to take proper means to supervise in detail the exercise of those rights. Determinations of the board are open to review *de novo* in appropriate proceedings before the local courts, provided an appeal is taken within sixty days, if the appellant appeared before the board, or three years, if he did not there appear. A proceeding before the board having been petitioned by one claimant, an injunction

was sought by another to prevent the board from acting, on the ground that the statute vested the board with judicial powers and was, therefore, unconstitutional. *Held*, that the injunction be granted. *Board of Water Engineers* v. *McKnight*, 229 S. W. 301 (Tex.).

For a discussion of the principles involved, see NOTES, *supra*, p. 450.

CONTRACTS — CONSTRUCTION OF CONTRACTS — NATURE OF SHIPPING DOCUMENTS TO BE TENDERED UNDER C. I. F. CONTRACT. — The plaintiff made a c. i. f. contract for the sale of goods to the defendant. The plaintiff duly tendered a document purporting to be a bill of lading, stating the goods to have been "received . . . to be transported by the SS. Anglia . . . or failing shipment by said steamer in and upon a following steamer." The defendant refused to accept this as a bill of lading. *Held*, that the plaintiff is not entitled to the price. *Diamond Alkali Export Corporation* v. *Bourgeois*, [1921] 3 K. B. 443.

Under a c. i. f. contract the purchaser agrees to pay cash against shipping documents, including a bill of lading. See *C. Groom, Ltd.* v. *Barber*, [1915] 1 K. B. 316, 324; *Ireland* v. *Livingston*, L. R. 5 H. L. 395, 406; *Smith Co.* v. *Moscahlades*, 193 App. Div. 126, 129, 183 N. Y. Supp. 500, 503. What is a bill of lading within the meaning of the contract is a question of construction, to be determined largely by the sense given the words by business custom. An instrument acknowledging receipt by the carrier of goods to be shipped on a named or any other vessel does not fulfill all the requirements sometimes laid down for bills of lading. See *Rowley* v. *Bigelow*, 12 Pick. (Mass.) 307, 314; *The Caroline Miller*, 53 Fed. 136, 138 (S. D. N. Y.). But in modern business large-scale shipping often necessitates the acceptance of goods without naming the forwarding ship. And the English Privy Council has recently held that a document such as that refused in the principal case is a bill of lading within the Admiralty Act, 1861. *The Ship "Marlborough Hill"* v. *Alex. Cowan & Sons, Ltd.*, [1921] 1 A. C. 444. It is difficult to reach a definite conclusion on such a question of construction without an examination of the evidence as to business custom; but it seems likely that the view of the court in the principal case will not be universally followed.

COSTS — SUIT-MONEY FOR THE DEFENDANT WIFE IN A DIVORCE ACTION. — The husband sued for divorce on the ground of adultery. *Pendente lite*, the wife applied for the usual order for costs for her defense, filing an affidavit as to the merits, but not specifically denying the adultery. From an order that the husband pay her costs already incurred and lodge further security in court, the husband appealed. *Held*, that the appeal be dismissed. *Franklin* v. *Franklin*, [1921] P. 407.

For a discussion of the principles involved, see NOTES, *supra*, p. 464.

CRIMINAL LAW — PUBLIC TORTS — MISTAKE OF FACT. — A statute made it an offense punishable by fine and imprisonment to sell cider that is intoxicating. The defendant sold such cider, but introduced evidence that he did not know it was intoxicating. The judge refused to allow that issue to go to the jury, on the ground that it was no defense. *Held*, that mistake of fact is a defense in an action under this statute. *Coury* v. *State*, 200 Pac. 871 (Okla.).

For a discussion of the principles involved, see NOTES, *supra*, p. 462.

ESTOPPEL — TRANSFER OF PLEDGE INTEREST IN CHATTELS BY ESTOPPEL. — A delivered jewels to B, purporting to pledge them as his own for an advance made him by B. A had no interest in the jewels, but later he lent money to the true owner of them and obtained an agreement from the latter that they should stand pledged to A as security for this loan. The owner did not know